APPENDIX 1

Governor
Mike Avila

Lt. Governor
Archie Chavez

Treasurer
Jose R. Trujillo

PUEBLO of SANDIA

Box 6008
Bernalillo, New Mexico 87004
(505) 867-2876/5021

August 26, 1986

Lamar Parrish, P.A.
USSERY & PARRISH
P. O. Box 487
200 New Mexico National Bank
Albuquerque, NM 87103

Dear Mr. Parrish:

This letter is in response to the information requested regarding the beneficial impact of Sandia Indian Bingo.

Sandia Pueblo's successful bingo enterprise, began operations in January 1984, under the authority of the Sandia Pueblo Tribal Council through an enabling ordinance that has been approved by the Bureau of Indian Affairs, Albuquerque, New Mexico Area and Agency offices. The building in which the bingo operation is housed was financed through a Bureau of Indian Affairs direct loan; the paved road leading to it was constructed by the Bureau of Indian Affairs. During the bingo enterprise's two and one-half years of operation, our reservation employment has been reduced to about three percent. Tribal members employed by the bingo operation are gaining experience at every level of the operation. Proceeds from the enterprise help to fund tribal government and public projects to benefit our tribal people; the Pueblo has generated an enterprise equity of $839,687 to date. Beyond tribal employees, Sandia Indian Bingo employs non-member Indian and non-Indian individuals and has paid $2,408,521 in sa-

laries and wages, while purchasing $2,880,289 worth of good and services primarily in the surrounding Albuquerque metropolitan area. Additionally, we make contributions to Albuquerque and other New Mexico charitable organizations. We have provided a wholesome enterprise, entertaining to the public and benefiting the Pueblo in specific concrete ways.

PUEBLO OF SANDIA
REPORT ON LABOR FORCE (Source: U.S. Dept. of Interion, BIA)

Date	Labor Force	% Unemployed
February 1983	94	11.7
February 1984	110	7.3
February 1985	124	4.0

The statistics from the above REPORT show an increasing labor force from February of 1983 to February of 1985, while for the same period of time the labor force unemployed shows a 7.7% decrease. If you compare these statistics with the number of individuals employed at the bingo from the SANDIA INDIAN BINGO EMPLOYMENT report below, it is apparent that our bingo enterprise has substantially contributed to reducing unemployment on the Sandia Reservation. Note that 36 Tribal members employed at the bingo represents 29% of Sandia's labor force at February 1985.

SANDIA INDIAN BINGO EMPLOYMENT (Source: FUTA Tax Report)

	Quarter Ending 6/30/86	% Of Total
Tribal Members	36	28
Non-Member Indians	19	15
Non-Indians	73	57
Total	128	100

A major objective in developing Tribally controlled busi-

nesses, is to overcome the problems many of our members have in obtaining time off from work to attend to cultural and important religious activities without being penalized in their jobs situations. The Pueblos still maintain a strong cultural and religious foundation which binds the people together into close knit communities which have survive these many hundreds of years. At Sandia Indian Bingo, Tribal members make up 28% of total employees another 15% non-member Indians, primarily from surrounding Pueblo communities, with the balance non-Indian employees. We have found this ratio of Indian to non-Indian employees, allows us to give tribal employees time off from work to fulfill their responsibilities to the Community without disrupting the operations of the business, and without penalizing employees for taking time off from work for legitimate tribal related purposes.

PUEBLO OF SANDIA
BINGO REVENUE

Period	Bingo Revenue	% Of Total Tribal Revenue
01/01-84-12/31/84	$710,505	65.5
01/01/85-12/31/85	$655,261	51.5
01/01/86-07/31/86	$304,657	27.4

Bingo revenues represent an important source of revenue to Sandia Pueblo. Bingo revenues, as with all other tribally generated revenues, flow to the tribal treasury which funds our tribal government and tribal services. Using 1984 as a base year, we have been able to increase our tribal budget by 83% in 1985 and 95% in 1986. Budget line items in 1984, 1985 and 1986 include Salaries and employee related expenses; Repairs and Maintenance on community facilities including sewer and water, tribal buildings, swimming pool, tribal vehicles and heavy equipment, office equipment; Professional and Legal Services; Training; Educational Grants; Tribal Court; Computer Equipment; Purchase of Equipment including office equipment and heavy

construction equipment; BIA Loans for commercial buildings; Development Planning; Volunteer Fire Department and Construction of Tribal Buildings.

I hope the above information is of assistance to you.

Sincerely,

/s/ MIKE AVILA
MIKE AVILA
Governor

APPENDIX 2

FIRST CAPITOL OF NEW MEXICO
SAN JUAN PUEBLO TRIBAL COUNCIL

P.O. BOX 1099
SAN JUAN PUEBLO, NEW MEXICO 87566
PHONE (505) 852-4400

August 21, 1986

Lamar Parrish
Attorney at Law
200 Rio Grande, Valley Bank Bldg.
P.O. Box 487
Albuquerque, NM 87103

Dear Larmar:

As per your request, listed below is the information you needed on our Bingo Operation.

1. To date, the Pueblo has earned $75,662.44. The Pueblo receives each month a check and the amount depends on the profits attained for the month.

2. The amount earned is currently in a savings account and when needed it will be used for Community and Government services.

3. Presently there are 28 Indians and one (1) non-Indian employed by the Bingo Operation.

4. From time to time, the Bingo Operation assist non-profit organizations with fund raising activities. Organizations assisted are: Santa Fe Indian School and the San Juan Pueblo Parrish.

Sincerely,

/s/ MANUAL R. TRUJILLO
MANUAL R. TRUJILLO
Acting Governor
Pueblo of San Juan

APPENDIX 3

TESUQUE PUEBLO
ROUTE 11, BOX 1
SANTA FE, NEW MEXICO 87501

September 12, 1986

Carol J. Vigil
Attorney at Law
214 McKenzie
Santa Fe, New Mexico 87501

Re: Amicus Brief

Dear Ms. Vigil:

Pursuant to your letter of September 12, the following information is provided for inclusion in the Amicus Brief that will be filed on behalf of the Tesuque Pueblo.

The Tesuque Pueblo reservation encompasses approximately 17,000 acres, ten miles north of the City of Santa Fe, in the State of New Mexico. The Pueblo is comprised of approximately 300 people. The Pueblo reservation is not comprised of land that is considered rich in natural resources but does have a main highway which traverses the reservation.

The contigious land to the highway is the only land that is amenable to development. As such the Tesuque Pueblo Tribal Council has continued to struggle with the traditions and customs of the Pueblo and that will maximize the revenue needed by the Tribe for governmental educational and social services.

The Tribe presently owns and manages a trailer court, which was recently expanded, and a recreational vehicle campground. Both are small operations and do not require a great deal of labor. There are various leases to private business people which provide the Tribe with very small yearly revenue.

With the Federal Governments cut backs a Tribe such as ours feels the impact of reduced revenue more strongly than other Tribes because of the smaller population. Without a large population base the few services available are shared with other Tribes.

Faced with the above situation the Tribal Council has been engaged in a continuous search for viable projects that will provide money to the Tribe so that desperately needed human and governmental services can be provided.

In 1983 the Council was approached by several people who were exploring the idea of locating a successful Bingo Hall in the Northern part of New Mexico on an Indian reservation. After the Council explored each proposal it selected an Investment Company from Florida who proposed to finance and manage the Hall. The Council contacted the Bureau of Indian Affairs to see if this project was legal. The BIA responded favorably and the Council began negotiations with the Florida corporation.

The Tribe enacted a Statute that provided for the Bingo activity to occur and be regulated. (The Statute was codified in the Tribal Law and Order Code in December, 1985.) Then financial statements, resumes and other pertinent information was obtained on the investors. This information was forwarded to both the Bureau of Indian Affairs and the Federal Bureau of Investigations. The final contract was signed and sent, along with the Bingo Statute, to the Bureau in June of 1984. The BIA responded on or about July 1985.

The Tribal Council had then and still has high expectations of the Bingo operation to sustain the Tribes responsibility to provide governmental, social, educational and other services to the people of the Pueblo.

In the 18 months the Hall has operated the Tribe has realized approximately $15,000 which is directed to the Tribes general fund. The fund is administered by the Tribal

Council for various activities and projects such as maintenance of the Tribal offices, activities for the youth and senior citizens. The Tribe is planning to save enough to pave some of the reservation roads that are at times impassable as well as provide higher education scholarships.

Since the Bingo opened the Tribe virtually has no unemployment. However, underemployment is still a problem in that the Bingo Hall is only opened on the weekend nights. Of the 50 employees 53% are Tesuque Pueblo Indians while the remainder are either Indians from the other 5 local Pueblos or non-Indians without exception, all employees are paid above minimum wage.

Security of the premises is provided by the Hall and law enforcement is provided by both the Tribe and the Bureau of Indian Affairs. The Bureau officers that are detailed to the Hall are cross deputized as New Mexico State Police Officers.

The Bingo Hall security has been trained to keep order in the Hall, patrol the premises 24 hours a day, 7 days a week. They maintain the area around the safe and the entrances and direct traffic. The BIA officers act as traffic controllers at the point of ingress and egress to the highway as well as maintain a regular check of the premises the nights of operation. There were times an escort was provided the Hall to the local bank when large amounts of case were deposited. During the entire 18 months of operation there has been *no* need to control or arrest anyone at the Hall or the outer premises. There has been no instance where there has been a suspicion that organized crime was present or otherwise active in the area. In the event an incident occured the BIA officers, being cross deputized, has the authority to arrest and detain both Indians and non-Indians. The Tribal police have the authority to arrest and detain Indian and non-Indians for a reasonable time, until the BIA officers arrive and take over. See State of New Mexico v. Ryder, et al.,

The local community is not only provided with entertainment but benefit directly from the income produced by the case awards but the utilization by the Hall of services and supplies. The local charities also are directly included in the cash awards. The Hall scheduled a charity night each month. The game winner, in addition to the cash award won, selected his or her favorite charity and the Hall made a direct contribution to the charity in an amount equal to the players award.

I hope this above information is adequate, and I and the Council approve its inclusion into the Amicus Brief you are filing in the *Cabazon* case on behalf of Tesuque Pueblo.

Sincerely,

/s/ TONY SAMUEL
for Guadalupe Duran
Governor

cc: Jim Hena, General Manager Tesuque Pueblo
Jack Bond, President, Investment Finance Management, Inc.

APPENDIX 4

ACOMA DEVELOPMENT AUTHORITY

Call the Acoma Pueblo Bingo Hotline
MON-FRI : 8 a.m.—4:30 p.m.
(505) 552-6604 Ext. 53
SAT & SUN: 552-6608

55 Miles West of Albuquerque
or 17 miles East of Grants.

TAKE I-40 EXIT 102 SOUTH
& FOLLOW THE BINGO SIGNS

Pueblo of Acoma
BINGO

September 12, 1986

Michael D. Bustamante, Esq.
ORTEGA & SNEAD
212 Twelfth Street, N.W.
Albuquerque, New Mexico 87102

Re: Information regarding Pueblo of Acoma Bingo for *Amici Curiae* Brief to U.S. Supreme Court

Dear Mr. Bustamante:

Per your request, I am providing herewith the pertinent information regarding Acoma bingo operations, which is drawn from the financial statements for 1986 and is current up to and including August 31, 1986.

In 1983, the Pueblo of Acoma, acting through its Tribal Council, promulgated a bingo ordinance and began operations shortly thereafter. The present facilities were constructed through use of Economic Development Administration federal funds. The building is presently used also as a community center for the Recreation Program (boxing, runners' conference, Recreation Coordinators' training), Child Care Program, and Community Health Representative training facilities. The Acoma Tribal Police Department is housed in the same building.

As of August 31, 1986, gross sales have amounted to $701,430.25 for the Pueblo of Acoma. Bingo revenues are utilized through the Pueblo's general fund and have generated a total enterprise equity of $387,000, or an approximate average of $20,000 per month. Contributions to the local community in the form of cash awards have been $520,623.31, with the bingo enterprise purchasing approximately $7,188.77 in goods and services from local merchants which have been used in prizes and awards.

Unemployment, a staggering 78% at Acoma Pueblo, has been reduce a full 15% due to bingo. Acoma bingo has been successful in creating diversified enterprises that hire tribal members and non-members. In addition to operating the bingo, child care, and snack bar concession, the Pueblo of Acoma has developed a gas station, supermarket, construction company, trading post, cafe, and a tribal recreation area. Bingo activities employ 35 persons for game operation, 8 persons for the food concession, and 2 persons for child care, with all of these positions filled by tribal members. In addition, the Acoma bingo has paid $60,790.30 to these 35 employees over the period of the bingo operation. The Acoma of Pueblo Child Care Center has received $9,477.76, and a double-wide trailer for child care facilities.

The Pueblo of Acoma has opened its facilities for the generation of charitable revenues for such organizations as the Special Olympics, the Handicapped Resource Center (Grants, NM), the local Catholic diocese, and for various tribal and local youth groups. In addition, a $2,000 donation is made at Christmas for purchasing clothes for local needy children. Over these past three years and as a direct result of bingo revenues, the Pueblo of Acoma has been able to replace those now depleted federal dollars for needed programs such as Head Start, Hot Lunch Program, aid for flood victims and homes lost to fire, education supplies, including a bus, and for alcoholism and Elderly Care programs.

The Pueblo of Acoma has provided this information to be utilized in the litigation involving the Cabazon Band of Indians presently before the Supreme Court of the United States. It is our hope that the information provided will assist the Court in reviewing and determining the importance, both economically and socially, that bingo has for the Pueblo of Acoma. But for the operation of bingo for the Pueblo of Acoma, the above programs, funds, and assistance to our tribal members would not have occurred.

Very truly yours,

/s/ GLENAL E. RILEY
GLENAL E. RILEY
Business Manager
Acoma Development Authority

GER/sgd

APPENDIX 5

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 7 1986

Memorandum

To: All Area Directors

From: Assistant Secretary—Indian Affairs

Subject: Review of Tribal Bingo Management Contracts

This memorandum replaces the memorandum of the Deputy Assistant Secretary—Indian Affairs (Operations) issued on July 20, 1984, and amended on April 9, 1985.

On August 6, 1985, the Secretary wrote to the Governor of the Pueblo of Santa Ana about the Pueblo's proposed pari-mutuel dog racing enterprise. In that letter, the Secretary stated that, "[U]nless and until the Congress identifies a more appropriate entity than this Department to review Indian gambling management contracts, it will be the policy of this Department to seek to exercise its authority under 25 U.S.C. §81 (or under any other appropriate statute) to engage in such review, provided the contract at issue is within the scope of the statute." For purposes of these guidelines, all gambling management contracts of tribes or tribal enterprises should be presumed to fall within the scope of 25 U.S.C. §81 (or 25 U.S.C. §415, if a lease is involved).

The Secretary's policy statement recognizes both the fact that bingo management contracts present the potential for imposition upon the tribes and the fact that the federal courts are continuing to hold that 25 U.S.C. § 81 makes tribal bingo management contracts null and void unless they are approved. The decision of the U.S. Court of

Appeals for the Seventh Circuit in *Wisconsin Winnebago Business Committee v. Koberstein*, 762 F.2d 613 (7th Cir. 1985), which held that an unapproved contract was void, was discussed in the Secretary's letter. A more recent decision which reached the same conclusion is *United States ex rel. Shakopee Mdewakanton Sioux Community v. Pan American Management Co.*, 616 F. Supp. 1200 (D. Minn. 1985).

I will be writing to the tribes to request that they submit their management contracts for review if they have not yet done so. You should also encourage the tribes in your Area which have unapproved contracts to submit them for review. If feasible, you should offer to assist them in re-negotiating the contracts to bring them into conformity with the guidelines.

It is my intention that these guidelines will be applied in reviewing all contracts submitted after August 6, 1985, but not yet approved, regardless of the date of the contract.

Management contracts for bingo will continue to be reviewed at the Area level pursuant to the guidelines below. Contracts for gambling other than bingo are to be transmitted to the Central Office for review. I intend to consult with the Attorney General of the state concerned before approving a management contract for gambling other than bingo to determine whether the gambling activity violates state criminal laws.

Until further notice, the following guidelines should be observed in reviewing tribal bingo management contracts.

1. Authority to approve of disapprove tribal contracts may not be delegated to the Superintendents. 10 BIAM 3.5A. Accordingly, tribal bingo management contracts may be acted on only at the Area level or above. However, the Superintendents should participate in the review process and offer their recommendations to the Area Directors.

2. The contract or an accompanying resolution must set forth the scope of authority of the tribal officials who have signed the contract on behalf of the tribe* and identify the provision of the tribal organic document which authorizes the contract.

3. The contract must set forth (1) the time and place where it was made, (2) the purpose for which it was made, and (3) the thing or things to be done under it.

4. The contract must have a fixed limited time to run, which must be distinctly stated.* The contract term should not exceed five years unless there is provision for renegotiation of the management fee or other adjustment of the fee to accommodate changes in circumstances. For contracts of longer than five years duration, the opportunity for renegotiation or other provision for adjustment should arise no later than five years after the contract is entered and thereafter at intervals of no longer than five years.

5. The contract must include the amount or rate per centum of the contractor's fee.* It should also specify the method of computing the fee.

6. The contract must specifically set forth any contingent matter or condition which constitutes a part of the contract.* The contract should state that it represents the entire agreement of the parties.

7. The contract should state that no payments have been made and provide that no payments will be made to any elected member of the tribal government or relative[1] of

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* All provisions followed by asterisks are statutory requirements contained in 25 U.S.C. § 81.

[1] For purposes of these guidelines, "relative" means an individual who is related to an elected member of the tribal government as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

any elected member of the tribal government for the purpose of obtaining or maintaining the contract or any other privilege for the contractor.

8. The contract must include or have attached a list of all parties in interest to the contract* including, on behalf of the contractor, all investors, including general and limited partners, all corporate officers and directors, all stockholders of a corporation, and all employees who will have day-to-day management responsibility for the gambling operation. The list must include the residence* and business addresses, occupations*, dates of birth and social security numbers of all such persons. If the contractor is a corporation, its articles of incorporation and the corporate resolution authorizing the contract should also be attached. Additional information, such as resumes of individuals or information on lenders, may be requested if you believe it will assist you in evaluating the contract.

9. The contract should state that no party in interest, as defined in paragraph 8, is an elected member of the tribal government or a relative of an elected member of the tribal government. The contract should provide that the contractor will require any party in interest who is elected to the tribal government or whose relative is elected to the tribal government to divest himself or herself of his or her interest in the contract.

10. The contract should state that no elected member of the tribal government, or relative in the immediate household of an elected member of the tribal government, may be an employee of the contractor or of the bingo enterprise.

11. The contract should specifically state whether assignments or subcontracts[2] will be permitted. If they are per-

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[2] "Subcontract" means any contractual arrangement between the contractor and a third party wherein the third party will have any responsibility for the gambling operation or access to the proceeds of the operation.

mitted, the contract should provide that no assignment or subcontract is valid until approved by the Secretary or his authorized representative in the BIA. Assignments or subcontracts submitted for approval should include or have attached a list of all parties in interest as defined in paragraph 8 above, including addresses, occupations, dates of birth and social security numbers.

12. Before any contract is approved, the names of persons submitted pursuant to paragraphs 8 and 11 should be transmitted to the FBI for name and record checks. All such names and results of the FBI checks should be sent to the Chief, Division of Law Enforcement Services, who will maintain a control file of this information. No contract, assignment, or subcontract should be approved where the FBI report shows a felony conviction or plea of nolo contendere for any such person. If the FBI report shows an indictment for any such person, the tribe should be so advised.

13. The contract should require the contractor to furnish the tribe, on at least a monthly basis, statements showing revenues and expenses of the gambling operation and should provide that an independent audit by a certified public accountant acceptable to the tribe will be performed at least annually.

14. The contract should provide that the tribe will receive its portion of the proceeds of the gambling operation on at least a monthly basis. The contract should specify the tribal official or bank account to whom the tribe's portion of the proceeds should be paid and such provision should be consistent with the tribe's constitution and bylaws.

15. The contract should set out the accounting procedures to be used and should provide that the contractor's books of account will be maintained, and its financial statements prepared, in accordance with generally accepted accounting principles.

16. The contract should provide that the tribe has the right to inspect the contractor's books at all reasonable times, such as during normal business hours, and should explicitly recognize the right of the tribe at any time to secure an independent audit of the contractor's accounts.

17. The contract should specifically identify those expenses which constitute operating expenses and provide a method, requiring concurrence by the tribe, for determining the allowability of non-enumerated expenses as operating expenses.

18. The contract should require the establishment of a cash management system adequate to safeguard the funds of the operation and should provide that the tribe will have the right to oversee the system.

19. The contract should have a provision for dispute resolution short of litigation, preferably through a private procedure, such as arbitration.

20. The contract should clearly set out the grounds and procedures for termination of the contract. Breach of contract should be a ground for termination.

21. The tribe should have a valid ordinance authorizing and regulating the gambling activity to be conducted pursuant to the contract, and the contract should state that the gambling operation will be conducted in accordance with the tribal ordinance.

22. The contract should identify the party responsible for employment and personnel matters. A provision for Indian preference is desirable.

23. The contract should be consistent with any related lease of trust land. If no related lease is submitted, the management contract should be examined to determine whether the relationship between the parties, as described in the contract, will require a lease. If it will, the tribe should be so advised.

24. The contract should provide that the contractor will not interfere with or attempt to influence internal affairs or governmental decisions of the tribe.

25. If existing provisions for law enforcement and fire protection are not adequate for the proposed enterprise, the contract should specify how these services will be provided.

26. Compliance with the National Environmental Policy Act is required before a bingo management contract (or related lease) is approved.

27. The contract should be reviewed for legal sufficiency by the Regional or Field Solicitor's Office. This is no substitute for review by Bureau officials under these guidelines, however.

28. If your opinion, after review of a contract, is that the contract may not be in the best economic interest of the tribe, you should advise the tribe of your opinion and the reasons for it. However, if the tribe still wishes to proceed with the contract, and it appears that the tribe has entered into it at arms length and after careful consideration, the tribe's business judgment should be respected, and the contract should not be disapproved solely on the grounds that the tribe may have been able to make a better bargain. On the other hand, where it appears from the contract itself or from surrounding circumstances that the tribe has made a particularly unwise business decision or has been subjected to outside pressure, the contract should not be approved. To assist you in this assessment, you may wish to ask the tribe to submit a narrative describing how the contractor was selected and how the contract negotiations were conducted.

29. If contract modifications sufficient to bring the contract into conformity with these instructions cannot be accomplished, the contract should be disapproved. If the

contract is disapproved, the tribe should be informed in writing of the reasons for disapproval.

30. Generally, the Superintendent should, within seven (7) working days of a tribal request to review a gambling management contract, transmit the documents submitted for review and approval to the Area Director. The Area Director should, within three (3) working days, send an acknowledgment of receipt of the documents to the tribe and the contractor. A final decision concerning the contract should be made as soon as possible, and not later than thirty (30) working days after the contract documents, the FBI reports, and Solicitor's advice are received and after it is clear that no further modifications of the contract will be made. A file should be maintained on the contract which is adequate to show the reasons for approval or disapproval of the contract.

31. Appeals from an Area Director's decision may be made pursuant to 25 CFR Part 2.

/s/ ROSS SWIMMER
ROSS SWIMMER

APPENDIX 6

Attorney General of New Mexico

PAUL BARDACKE
Attorney General P.O. Drawer 1508
Santa Fe, New Mexico 87504
505-827-6000

KAY MARR
STEPHEN WESTHEIMER
Deputy Attorneys General

TESTIMONY OF PAUL BARDACKE NEW MEXICO ATTORNEY GENERAL BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS CONCERNING S. 902, H.R. 1920 AND THE ADMINISTRATION'S PROPOSED "INDIAN GAMBLING AUTHORIZATION AND REGULATION ACT OF 1986"

June 17, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Paul Bardacke, Attorney General of the State of New Mexico. I thank this Committee for the opportunity to comment on three separate Indian gambling bills, S. 902, H.R. 1920, and the administration's proposed Indian Gambling Authorization and Regulation Act of 1986 which, as I prepare this testimony, has not formally been introduced in the Senate. I appear here today in support of the administration bill. I cannot support S. 902 or H.r. 1920 in their present forms.

Because of citizen concern over Indian gambling and because of the legal issues surrounding Indian gambling, I have personally spent a great deal of time on this issue over the past three years. I am convinced that Congress is the proper forum for resolving this issue rather than the courts. I commend this Committee for trying to find a legislative solution to the problem of defining the proper role for Indian gambling.

New Mexico has four tribes currently operating bingo games with a fifth game ready to begin operation. These games represent an important source of revenue and employment to Indian tribes that are experiencing difficult economic times. While I appreciate the economic benefits of these games to the tribes, I must acknowledge hearing a great deal of concern and resentment from many in the non-Indian community over the availability of these games. Each of the three bills being discussed today acknowledge that the benefits of high stakes Indian bingo outweigh any disadvantages. I do not dispute that conclusion. To date high stakes Indian bingo games have not created law enforcement problems in New Mexico and there appears to be growing non-Indian acceptance of them. Given this current state of affairs I do not oppose high stakes Indian bingo as it is currently conducted in New Mexico.

At the same time New Mexico faces the possibility of more extensive tribal gambling that is not acceptable to the non-Indian community. Pari-mutual dog racing, an activity which is criminal under New Mexico law, was planned for a reservation bordering New Mexico's largest city until disapproved by the Secretary of Interior. The authority for that disapproval is presently being litigated. Citizen concern over forms of gambling other than bingo is very high in New Mexico and whenever the possibility of such gambling is mentioned in the newspapers or television, my office is inundated with calls.

On balance I find that the position expressed in the administration bill represents an excellent compromise. That bill legalizes bingo on Indian reservations, but limits all other forms of gambling in which non-Indian s are involved to the exact games allowed by the states under the same regulations as are imposed by the states. Unlike the administration proposal, neither S. 902 nor H.r. 1920 deals with the central issue in the area of Indian gambling—defining which Indian gambling activities should be legalized and which should be prohibited. I support the

administration proposal because it deals with this central issue and; I believe, reaches a reasonable position.

Twice in the past I have submitted comments on proposed Indian gambling legislation. While previous bills which I have examined have had points to commend them, each has also had limitations about which I have expressed concerns. I find that the proposed administration bill resolves each of my previous concerns. The great advantage to the proposed administration bill is that it deals with the tough issues and it deals with those issues clearly and directly and in a manner that will avoid endless litigation. I should like to comment on each of the proposed bills.

S. 902—S. 902 provides a mechanism for approving tribal ordinances and management contracts which, arguably, will protect Indian Tribes. This bill, however, does nothing to answer the important question of what gambling is legal. S. 902's biggest problem is its failure to deal with this issue, and S. 902 thereby insures that there will be endless litigation regarding which forms of gambling are legal.

There are other problems with S. 902:

(1) S. 902 provides that approval of tribal gambling ordinances is mandatory if certain minimum requirements are met, even if such ordinances are not in the best interest of the tribe. The United States' responsibility to tribes should go beyond a mechanical approach to the approval of ordinances.

(2) S. 902 provides that the conduct of gaming activities on a reservation, which activities have not been approved by the Secretary or the Commission, will be punished by existing federal law. If, as a number of courts have held, it is not a violation of existing federal law for tribes to engage in certain gambling activities, there is no criminal sanction for failure to have a tribal ordinance approved. S. 902, therefore, creates no incentive for a tribe to seek approval of its gambling ordinances.

(3) "Indian country" pursuant to S. 902 includes all land "held by an Indian tribe . . . subject to a restriction by the United States against alienation." Arguably, any land purchased by a tribe in any location is subject to restrictions on alienation. 25 U.S.C. Sec. 177 (No . . . conveyance of lands . . . from any . . . tribe of Indians, shall be of any validity . . . unless the same be made by treaty or convention entered into pursuant to the Constitution.) If a tribe violates gaming laws on such land, S. 902 provides that enforcement is to occur pursuant to tribal law or 18 U.S.C. Sec. 1152 (the Indian Country Crimes Act). 18 U.S.C. Sec. 1152, however, has a different definition of "Indian country" for purposes of jurisdiction than is found in S. 902. This second definition would not include off-reservation gambling and federal law, therefore, would also not apply to such lands. A tribe could arguably purchase land in downtown Albuquerque and be subject only to tribal law to control illegal activities.

H.R. 1920—H.R. 1920 ignores the issue of what gambling is lawful, by creating a four-year moratorium on Class III gambling. The toughest decision facing Congress is, therefore, delayed for four years. I find it difficult to believe that Congress needs four years to understand the impact of Indian gambling. Aside from the fact that H.R. 1920, like S. 902, avoids the most important issue related to indian gambling, H.R. 1920 has other problems:

(1) While H.R. 1920 makes most Class III gambling unlawful during the four-year moratorium, it is unclear which criminal provision will be used to punish this unlawful Class III gambling. Arguably, H.R. 1920 assumes that all Class III gambling is illegal under present law and will be punished under existing criminal law provisions. Whether current law makes Class III gambling illegal is presently in litigation in a number of forums. If present law does not apply to Class III gambling, there is no law under which to punish such gambling. The four-year moratorium is meaningless as it only precludes that Class III

gambling which is presently illegal. Litigation will continue on the issue of the present state of the law. I question the wisdom of passing a law that insures that litigation will flourish.

(2) The provision that Class III gaming operating as of January 1, 1986 can continue to operate if it is "otherwise legal under existing law" insures that there will be continued litigation over what is "otherwise legal under existing law."

(3) H.R. 1920 places Class I gaming, "social games for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebration", within exclusive tribal control. Class I gambling is not limited to tribal members. There is nothing to preclude tribal ceremonies or celebrations 365 nights a year at which non-Indians are welcome. It is unclear if horse or dog races or betting on athletic competitions or dice or any of a number of other activities would qualify as traditional forms of gambling. It is not clear who could challenge a tribal ordinance establishing such a Class I gaming system or how such a challenge could occur.

(4) Class II gaming, which is permitted under H.R. 1920, specifically includes "pull tabs, punch boards, and other games similar to bingo. . . ." If the Chairman of the Commission approves video games or blackjack or dog racing because he determines such games are "similar to bingo", it is unclear who can challenge that decision or where that challenge could be brought.

(5) H.R. 1920 makes the approval of gambling ordinances mandatory if certain minimum requirements are met. No discretion is given to act in the best interests of the tribe or tribal members. No flexibility exists to deny approval if a problem is found other than those specifically set forth in H.r. 1920.

(6) Under H.R. 1920 a tribal enterprise is required to have its bingo ordinances approved by the Chairman of the Commission. As under S. 902, it is not clear what, if any, penalty is attached to the operation of a bingo operation which has not had proper approval. Since bingo is arguably lawful under present law, unless H.r. 1920 imposes some sanction for unlawful games, no presently existing law may exist which imposes sanctions.

Proposed Administration Bill—At the time this testimony is being drafted, this proposal has not been introduced in the Senate although its provisions are well known. Indian gambling legislation cannot be discussed without mentioning this bill. All of the concerns that I have had with regard to past bills are dealt with in the administration proposal. The most important aspect of the administration proposal is that it is clearly drafted and will end time consuming and costly litigation. I commend the fine work of those who drafted this bill. I should like to comment on what will be the controversial portions of the proposal:

(1) Authority for No Limit Tribal Bingo Games

Many groups will oppose this provision. Some will argue that the Indian bingo cases were wrongly decided and should not form the basis for federal legislation. There are strong arguments on both side of the issue of whether Indian bingo will in fact be upheld by the United States Supreme Court. That question is unimportant. In New Mexico, Indian bingo has not created any law enforcement problems. Where I have had access to information on the economic benefits of Indian bingo, the reports have been extremely positive. I find it difficult to fault the compromise position expressed in the administration proposal legalizing bingo but precluding more expansive gambling operations.

(2) Allowing State Law to Determine What is Permissable Indian Gambling for Games Other Than Bingo

A number of tribes will object to letting state laws and regulations be the standard for determining what activities are legal for gambling other than bingo. The tribes' objections will most likely be based on arguments of tribal sovereignty. While I support the right of Indian tribes to be free from state interferences with regard to matters which are predominantly internal to the tribes, Indian gambling is not a sovereignty issue. To the extent that such gambling is an internal matter it is subject only to tribal regulation pursuant to Section 401. To the extent that such gambling is set up to bring non-tribal members on to the reservation to avoid state law, its impact is almost exclusively off reservation, and the issue is not one of sovereignty.

(3) The Grant of State Jurisdiction to Enforce Gambling Laws Other Than Bingo Laws

In the past I have taken the position that there should be federal and not state criminal law jurisdiction over gambling violations on Indian reservations. I realize this position is contrary to many other state Attorneys General. My concern was a matter of practicalities. In New Mexico, the state never assumed general criminal jurisdiction over on-reservation Indians, the federal government exercises that general criminal authority. It seemed to be a waste of resources to have federal law enforcement officers, who are regularly on the reservations, ignoring criminal activities concerning gambling while state officers who have minimal contact with the reservations were forced to investigate criminal activity in what, in New Mexico, can be extremely remote areas. There is also a great deal of resentment and fear every time the states assume additional jurisdictional authority over Indian reservations. I will not argue that tribal concerns over the hostile relationship between state and tribal government is unfounded.

It has, therefore, seemed to me that federal jurisdiction was more appropriate than state jurisdiction. At the same time I recognize that state regulated gambling activities, which in New Mexico would mean horse racing, can most effectively be regulated by the states rather than the federal government because states already have regulatory mechanisms in place.

The provision in the administration proposal which leaves primary enforcement authority in the state, but provides for federal criminal jurisdiction where justified, is a well considered compromise. I feel this solution, where both the state and federal government have criminal jurisdiction, will lead to cooperative efforts which will be more efficient and cost effective than placing criminal jurisdiction in only the state or only the federal government.

I express only one concern over the administration proposal. That concern is with Section 305(9) dealing with the dispensing of alcoholic beverages. It is not clear whether this is an alternative method to 18 U.S.C. Sec. 1161 for a tribe to obtain authority to sell liquor. 18 U.S.C. Sec. 1161 sets forth a specific procedure which must be followed prior to selling liquor in any country. Recent decisions of the United States Supreme Court have clearly determined the relationship between the states and tribes with regard to regulating liquor sales pursuant to Section 1161. It is not clear if the proposed Section 305(9) is in addition to, or an alternative to 18 U.S.C. Sec. 1161. If it is an alternative to Section 1161, it will be a matter for extensive litigation; if it is in addition to Section 1161, I have no concerns.

In closing I wish to again thank this Committee for the opportunity to speak on this important issue. I will be happy to answer any questions.